IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JUAN PADILLA-JIMINEZ,	:	
Petitioner,	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 00-696
JANET RENO,	:	
Respondent.	:	

MEMORANDUM AND ORDER

YOHN, J. March , 2000

The petitioner, Juan Padilla-Jiminez, has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The petitioner is a citizen of the Dominican Republic who has been living in the United States as a legal resident alien since 1984.

On August 27, 1996, the petitioner was convicted in a Pennsylvania state court of several drug-related offenses. On November 7, 1996, the Immigration & Naturalization Service ("INS") executed an order to show cause ("OSC") to Padilla-Jiminez, in which the INS alleged that the petitioner's convictions rendered him a deportable alien. On November 25, 1996, the OSC was served on the petitioner. The Immigration Judge found Padilla-Jiminez deportable and ordered him removed from the United States. The Board of Immigration Appeals ("BIA") affirmed the Immigration Judge's decision on May 18, 1999.

The petitioner has now filed a petition for writ of habeas corpus in which he argues that he is entitled to apply for a waiver of deportation. For the reasons that follow, I find that the petitioner is not entitled to apply for a waiver of deportation and thus, I will deny his petition for writ of habeas corpus.

DISCUSSION

The petitioner argues that he is entitled to apply for a waiver to avoid deportation under former section 212(c) of the Immigration and Nationality Act ("INA"), codified at 8 U.S.C. § 1882(c) (repealed 1996) (commonly referred to as a "section 212(c) waiver").[1] Prior to its amendment in 1996, an alien could apply for a section 212(c) waiver, which "permitted the Attorney General, in her discretion, to issue waivers to legal aliens who had traveled abroad voluntarily and were seeking entry back into the country but who would be excludable based on their criminal convictions." See DeSousa v. Reno, 190 F.3d 175, 178 (3d Cir. 1999). Although on its face the waiver provision applied only to aliens in exclusion proceedings, the courts and the Board of Immigration Appeals ("BIA"), had extended it to apply also to deportation proceedings. See id. at 179. Prior to 1996, section 212(c) waivers were only made unavailable to aliens who had been convicted of an aggravated felony, and who had served a term of imprisonment of at least five years for such felonies. See id.

Section 212(c) was substantially amended by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), which became effective on April 24, 1996. "As amended, § 212(c) precludes 'deportable' aliens who have been convicted of an aggravated felony or two crimes of moral turpitude from receiving waivers of inadmissibility, regardless of the prison term served for such crimes." See id. (citing AEDPA, Pub. L. No. 104-132, 110 Stat. 1214 (1996), § 440(d) (enacted April 24, 1996)).

The petitioner argues that he should be permitted to apply for a section 212(c) waiver

[1]For a complete discussion of the statutory framework of section 212 waivers, see Guy v. Reno, No. 99-3589, 1999 WL 718554, *2-3 (E.D. Pa. Sept. 2, 1999).

because the court should not retroactively apply the provision limiting the waiver provision (i.e., § 440(d)), to his case. In sum, the petitioner contends that because the criminal acts leading to his deportation order occurred before the amendment of the statute in 1996 (a fact that is not in the record, but which I assume for purposes of this memorandum), the law should not be applied retroactively to remove the possibility of a waiver in his case.

As support for his argument, the petitioner cites the recent Third Circuit decision in Sandovel v. Reno, 166 F.3d 225 (3d Cir. 1999). The decision in Sandovel is readily distinguishable from this case, however, and is not controlling. The petitioner in Sandoval had been ordered deported by an immigration judge, and his appeal of this decision to the BIA was pending on April 24, 1996, when Congress passed the AEDPA. In Sandoval, therefore, the issue before the Third Circuit was whether the amended section 212(c) could be applied to proceedings pending before the BIA at the time of AEDPA's effective date. See id. at 242. The court held that it could not be applied retroactively to cases pending on the date the new act was enacted. See id. at 241. The decision in Sandoval does not control here, however, because in this case the petitioner's deportation proceedings were not pending at the time Congress passed the AEDPA.

Instead, the recent Third Circuit decision in DeSousa v. Reno, 190 F.3d 175 (3d Cir. 1999), dictates the result here. In DeSousa, the court considered whether the amended section 212(c) was impermissibly retroactive when applied to the petitioner in that case. See id. at 185-87. DeSousa had been convicted of crimes which rendered him deportable prior to AEDPA's effective date. See id. at 186. The court found that the decision in Sandoval was not applicable to DeSousa's case because Sandoval applied only to proceedings pending before INS on AEDPA's effective date and "the INS began [DeSousa's] deportation proceedings after

AEDPA's effective date." Id. The court then held that the amended § 212(c) did not have a "retroactive effect" as applied to DeSousa. See id. at 187. Accordingly, the court held that "[b]ecause § 212(c) does not have retroactive effect, courts construing it should 'apply the law in effect at the time . . . [of] decision.'" Id. (quoting Landgraf v. USI Film Prods., 511 U.S. 255, 264 (1994)). The court then applied the amended § 212(c) to DeSousa's case. See id.

The facts of this case are even stronger against the petitioner than the facts in DeSousa. Here, the only relevant event that is alleged to have occurred before the enactment of the AEDPA, was the criminal act giving rise to the deportation proceedings. The petitioner was convicted after the AEDPA was passed (which DeSousa was not), and the proceedings leading to his deportation occurred months after the AEDPA was enacted. Accordingly, I hold that the amended § 212(c) applies to this case and does not have an impermissible retroactive effect. See DeSousa, 190 F.3d at 187. Thus, I find that the petitioner is not entitled to apply for a waiver under § 212(c), and I will deny his petition for a writ of habeas corpus.

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ORDER

AND NOW, this day of March, 2000, upon consideration of the petitioner's pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, and the government's response thereto, IT IS HEREBY ORDERED that the petition is DENIED.

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William H. Yohn, Jr., J.